UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

UNITED STATES OF AMERICA,	)	CASE NO: 2:12-CV-223
Plaintiff,	)	CIVIL
vs.	)	Corpus Christi, Texas
2005 PILATUS AIRCRAFT, BEARING TAIL NO. N679PE,	)	Thursday, December 20, 2012
	)	(2:58 p.m. to 3:10 p.m.)
Defendant.	)	

EVIDENTIARY HEARING

BEFORE THE HONORABLE NELVA GONZALES RAMOS,
UNITED STATES DISTRICT JUDGE

Appearances: See next page

Court Recorder: Genay Rogan

Clerk: Brandy Cortez

Court Security Officer: Adolph Castillo

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APPEARANCES FOR:

Plaintiff:	JULIE HAMPTON, ESQ. Assistant United States Attorney 800 N. Shoreline, Suite 500 Corpus Christi, Texas 78401
Defendant:	VICTOR QUINTANILLA, ESQ. ERNESTO GAMEZ, JR., ESQ. Law Offices of Ernesto Gamez, Jr. 777 E. Harrison Street Brownsville, Texas 78520

Corpus Christi, Texas; Thursday, December 20, 2012; 2:58 p.m.

(Call to Order)

THE COURT: Court calls Cause Number C-2-223 [sic], *USA versus 2005 Pilatus Aircraft*.

MS. HAMPTON: Julie Hampton on behalf of the United States.

MR. GAMEZ: Good afternoon, Judge. Ernesto Gamez, Junior, and Victor Quintanilla on behalf of the claimant.

THE COURT: Good afternoon.

MR. QUINTANILLA: Good afternoon, your Honor.

THE COURT: I believe you all were made aware that really the only issue that I wanted to address was the preservation of property; look at that notice.

MR. GAMEZ: Yes.

THE COURT: So I think the stay is appropriate based on the briefing and --

MR. GAMEZ: Yes, Judge.

THE COURT: -- all the motions I've seen.

MR. GAMEZ: We had filed a supplemental and/or second motion to set aside order granting stay, and some very good strong case law on that, Judge.

THE COURT: And I reviewed that. That was just filed today. I did review it quickly.

MR. GAMEZ: Yes, Judge.

THE COURT: But I think from what I've seen so far, the stay is appropriate, so the Court is going to order that the stay remain in effect, so the motion to set aside is denied. I think there were some objections. I'm not sure how it was worded, but those are overruled.

But the issue I guess that had been raised, and I wanted to address it, was the preservation of property. So you all raised it. I don't know if you want to -- have we got an expert report today? I think it was today.

MR. GAMEZ: Well, Judge, we didn't really raise it other than we want to make sure that the airplane that the Government is seizing is being properly taken care of, since my client most certainly feels that it's his property, and if the Government is going to seize it for now, temporarily anyway, we'd like to make sure that they're maintaining it.

THE COURT: Okay.

MS. HAMPTON: The action that the Government has taken to maintain the plane are illustrated and laid out in the declaration of Special Agent John Mayans (phonetic) that was filed today as an attachment to Government motion for -- I have a copy of it, your Honor.

THE COURT: Okay. Yeah, I don't think I saw that one.

MS. HAMPTON: I've given it to Defense as well, your Honor. It was filed late today, your Honor.

The Government has this airplane at a Governmentcontracted facility in Fort Lauderdale, Florida. There is a licensed mechanic who is licensed specifically to maintain and to conduct maintenance on this particular type of aircraft who is maintaining the aircraft.

I go over in Paragraph 8 the declaration of Special Agent John Mayans. He states all the ways that this aircraft is being maintained resulting in a monthly cost of over $1,200 to the Government just for maintenance.

It is being very well taken care, your Honor. It started on a biweekly basis. Everything's maintained and checked, and those things are talked about in Paragraph 8 of Special Agent Mayan's declaration.

The Government is paying money to -- I think $850 plus to store it every month at this facility. But it is being maintained in an effort to keep the value what it is.

And I've been told that this particular aircraft with proper maintenance will not depreciate; that it may even appreciate. The current fair market value is $1.75 million.

THE COURT: Okay. Did you all have a chance to review the declaration?

MR. GAMEZ: We were presented this 30 minutes ago, Judge, and just reviewed it. If we're being sure that the airplane is taken care of, that does satisfy us, Judge --

THE COURT: Okay.

MR. GAMEZ: -- at this point in time.

THE COURT: So then there's no issues on that any further?

MR. GAMEZ: Well, Judge --

MS. HAMPTON: Not that I know of, your Honor.

MR. GAMEZ: I would like, respectfully, Judge, when the Court has time, to set our second motion or request. I believe the Court's order was, it denied the invitation to have a discussion on the stay, and we've given the Court some pretty strong case law on the due process issues on this type of particular stay; so dealing on the Court's granting a stay with just a "no," and how that really is not quite fair and equitable without having the ability to present, your Honor, who is a guardian of fairness and equity and fair play. So we'd like you at your earliest convenience, Judge, to set this in a couple of weeks if you can.

THE COURT: Unless your supplemental filing today addressed different issues, and I did read through it, I'm comfortable with what was already briefed and what's been presented to the Court with the stay staying in place.

So again, I will look at that again.

MR. GAMEZ: I'm sorry. My hearing is a little --

THE COURT: I just said unless your filing today changes or brings another issue to this matter on the stay, I'm comfortable with the briefing and the pleadings that are before the Court with having the stay remain in place.

MR. GAMEZ: I did bring other issues for the Court's consideration.

THE COURT: Okay. I'll look at that again, but at this point I don't see that a hearing is necessary, but I --

MR. GAMEZ: Oh, yes, Judge, I understand.

THE COURT: -- I will review that again. There's no issues on the maintenance? I know the Government filed a motion today, but if there is a stay, there's a stay.

MR. GAMEZ: Yes, your Honor.

MS. HAMPTON: The motion is for an interlocutory; it's still for a judicial private sale, your Honor. I'd ask that the Court consider the -- considering the fees that the Government is incurring monthly, and considering the dependency of this case, the Brownsville case, the situation at hand, your Honor, I would ask that the Court consider that in the hopes that we can sell this plane in a private judicial sale which is provided for under the statute. And --

THE COURT: I'm just not sure with the stay in place that I can do anything because --

MS. HAMPTON: I can address that --

THE COURT: Okay.

MS. HAMPTON: -- separately maybe in an amendment, your Honor, if the Court --

THE COURT: All right.

MS. HAMPTON: Okay. Thank you, your Honor.

MR. GAMEZ: And Judge, we're not prepared to go on --

THE COURT: I'm not --

MR. GAMEZ: -- forward in this case, because as you say, there is a stay.

THE COURT: Right.

MR. GAMEZ: And we did cite a case in --

THE COURT: And I'm not -- I was not going to have her argue it today. I was just bringing up the fact that a motion had been filed. There is a stay in place, so I was not planning to do anything on that.

MR. GAMEZ: Yes, your Honor.

THE COURT: Anything else to address today?

MS. HAMPTON: No, your Honor.

MR. QUINTANILLA: I don't believe so. Did you want to say anything?

MR. GAMEZ: What's that?

MR. QUINTANILLA: Just on the maintenance. Did you want to say anything before the Court?

MR. GAMEZ: Yes, Judge. Just when you decide to either grant me a hearing or deny a hearing --

THE COURT: Okay --

MR. GAMEZ: -- respectfully, Judge, there are certain things that I have to do whenever you get around to that.

THE COURT: All right. At this point, I'm denying it. I said I would review your filing that was filed today again, but it's denied. If I change my mind after I review that again, I'll certainly let you know. But it -- I -- it's denied.

MR. GAMEZ: My second motion is denied or you just haven't reviewed it, Judge?

THE COURT: I reviewed what you filed today. I don't think it changes the pleadings that I've already reviewed and done work on. So, I didn't take that as a second motion. I took it as a supplemental to what you had already filed.

MR. GAMEZ: It's supplemental and/or, and if the Court would just look at In Re: Moon (phonetic), Judge, corporation; the case that we cite that's -- it's most -- most attractive, Judge, and it's almost analogous to what we have here, Judge, without arguing the case. I'm not here to argue the case. I respect your Honor's opinion at this time.

THE COURT: Anything --

MR. GAMEZ: Just, when you have time --

THE COURT: -- further?

MR. GAMEZ: -- look at that case, please.

THE COURT: Okay. Anything further from the Government on that?

MS. HAMPTON: Yes, your Honor. The Commissioner's Forfeiture Reform Act, CFRA, was enacted in 1991, which was right after that case that he's referring to. In that act, the CFRA act, Congress enacted federal forfeiture laws and the procedures that we're to undertake in forfeiture laws, which is what the Government is proceeding under in this case which is currently the law.

What they're arguing is that this ex parte affidavit by Special Agent Mayans is violating their due process rights. 18 USC 981(g)(5) specifically carves out in the statute that the Government may ex parte the Court if there's some concern involving a criminal investigation. And that's what has been done in this case.

MR. GAMEZ: Okay, Judge --

MS. HAMPTON: It's specifically carved out in the statute, and this case has been overturned by statute.

MR. GAMEZ: Now, Judge --

THE COURT: Go ahead.

MR. GAMEZ: -- I'm going to temporarily argue, we're not arguing with the Court that the Government's an ex parte, your Honor. In fact, when we filed our claimant's position, and then filed discovery that -- expecting an ex parte, I asked Ms. Julie Hampton, if you're going to ex parte the Court, you know, I'd like to be present. Of course that didn't happen, and they ex parted you. And it's allowable under statute.

THE COURT: I -- I didn't hear that.

MR. GAMEZ: Okay.

THE COURT: Right?

MS. HAMPTON: But it goes to the challenge, your

Honor.

THE COURT: I mean -- yeah.

MR. GAMEZ: It's on the motion, Judge. And the Court granted it and, you know, what can I do other than coming before the Court and object? But now, Judge, that's -- I'm not arguing that.

What I'm suggesting is the order is defective, and the stay is incorrect, and the Fifth Circuit has issued mandamuses on these issues because there's twofold. The Government has to show good cause; not just get up here and allege conclusionary statements, Judge, on pleadings and say this is what it is and we're going to be harmed. That's clearly insufficient, and that denies due process.

The Court has to make findings of fact, and it can't do so without a hearing, your Honor, and an ex parte matter doesn't satisfy that, Judge. And it explains to the Court, for example, why can't -- the Court has a balancing and equitable position, or why can't I offer, your Honor, to protect the Government's position, a Lis Pendens of some sort, or a letter of credit from a bank for six months securing the value of that airplane which would satisfy your Honor. And the Court -- and that's what the Fifth Circuit says.

Your Honor is not just tied to limitations, either you grant it or deny it. The Court has alternative considerations to just blanket deny or grant it, especially when someone is unindicted, and that's another issue in this -- this is not a case where this attaches to an indictment, your Honor. This -- if that was the case, then I'd understand. This is a case where a man's presumed innocent till proven guilty, and he hasn't even been brought before a grand jury. And this case that we cited to you is about someone else who allegedly had drug money that had something to do with their properties, just like they're alleging here.

And there's been a reckless, Judge, allegation made in this forfeiture that we can prove is totally, inherently inaccurate and incorrect, and farfetched, and that their plane was purchased by a very important gentleman, respected in Mexico, Judge, in the political fields of his party, and had that airplane so his family wouldn't have to drive and be picked up by Zetas or kidnapped in highways by people that are kidnapping more fortunate socially economically affluent people, Judge.

So this is causing harm to -- potential harm to our Clients. So we're not arguing the statute, Judge. We're saying that the stay and the order, and if your Honor would look at it, respectfully, Judge. That's all I ask of it.

THE COURT: Okay.

MR. GAMEZ: Okay.

THE COURT: Anything else?

MS. HAMPTON: No, your Honor.

THE COURT: All right. You're excused then.

MR. GAMEZ: Thank you, Judge.

MR. QUINTANILLA: Thank you, Judge.

(This proceeding was adjourned at 3:10 p.m.)

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

Toni I Hudson	**March 14, 2013**
Signed	Dated

TONI HUDSON, TRANSCRIBER